



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: National Environmental Services Co., Inc.--
Reconsideration

File: B-254377.2

Date: May 20, 1994

James M. Mack, Esq., for the protester.
Gilbert H. Chong, Esq., and Paul M. Fisher, Esq., Department
of the Navy, for the agency.
Peter A. Iannicelli, Esq., and Michael R. Golden, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Because Federal Acquisition Regulation (FAR) governing protests to the contracting agency does not define the term "filing," the date of receipt by the contracting agency is used by General Accounting Office (GAO) for the purpose of determining timeliness of protests consistent with GAO Bid Protest Regulations which define "filing" as receipt in the GAO.

DECISION

National Environmental Services Co., Inc. (NESCO) requests reconsideration of our decision in National Envtl. Servs. Co., Inc., B-254377, Nov. 22, 1993, 93-2 CPD ¶ 290, in which we dismissed its protest alleging that the Navy improperly rejected its bid under invitation for bids No. N62474-92-B-0565. We determined that NESCO's protest to our Office was untimely under our Bid Protest Regulations, 4 C.F.R. §§ 21.2(a)(2) and 21.2(a)(3) (1993), because NESCO did not file its initial protest with the contracting agency until the 11th working day after NESCO received the Navy's letter advising it of its basis for protest (*i.e.*, that NESCO was determined nonresponsible because its individual bid bond surety was unacceptable). We affirm our prior decision.

In its reconsideration request, NESCO concedes that the Navy did not receive NESCO's agency-level protest until the 11th working day after NESCO received the Navy's letter advising NESCO that it was considered nonresponsible. However, NESCO states that it mailed its protest letter to the Navy on the 10th working day after learning its protest basis. NESCO contends that because there is no definition of the term "filing" in the regulations governing agency-level

protests,¹ the date of mailing, rather than the date of receipt by the contracting agency, should be used by our Office in determining whether a protest has been filed in a timely manner.

General Accounting Office (GAO) Bid Protest Regulations state:

"If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of the formal notification of or actual or constructive knowledge of initial adverse agency action will be considered, provided the initial protest to the agency was filed in accordance with the time limits prescribed in paragraphs (a) (1) and (a) (2) of this section, unless the contracting agency imposes a more stringent time for filing, in which case the agency's time for filing will control." 4 C.F.R. § 21.2(a)(3). [Emphasis added.]

Our Regulations also state:

"The term 'filed' regarding protests to the General Accounting Office means receipt of the protest and other submissions in the General Accounting Office." 4 C.F.R. § 21.0(g).

Clearly, the filing time limits prescribed in our Regulations incorporate the definition of "filing" set out in section 21.0(g).

As NESCO points out, the FAR provisions governing agency-level protests do not define "filing." However, as stated above in section 21.2(a)(3) of our Regulations, in determining the timeliness of an agency-level protest, the time limits in the GAO Regulations control unless the contracting agency's protest regulations provide a more stringent (*i.e.*, shorter) time for filing. Obviously, the absence of a definition for the term "filing" in the FAR cannot be construed as a more stringent filing requirement. Therefore, the filing requirements of the GAO Bid Protest Regulations are controlling.


Under our Regulations, 4 C.F.R. § 21.2(a)(2), if NESCO had filed its initial protest directly with our Office, the

¹Protests such as NESCO's are governed by the timeliness rules set forth in our Bid Protest Regulations, 4 C.F.R. part 21, and part 33 of the Federal Acquisition Regulation (FAR).

protest would have to have been filed (i.e., actually received at the correct address within GAO) no later than 10 working days after NESCO received the Navy's letter advising it of its basis for protest. We see no reason to allow NESCO a longer time period for filing its initial protest with the Navy. See Homemaker Health Aide Serv. of the Nat'l Capital Area, Inc., B-185024, Mar. 1, 1976, 76-1 CPD ¶ 142.

NESCO has not shown that our original decision contains either errors of fact or law, nor has NESCO submitted new information not previously considered that would warrant reversal of our decision as required under our Bid Protest Regulations. 4 C.F.R. § 21.12(a) (1993); Brunswick Corp., Defense Div.--Recon., B-250695.2, Mar. 9, 1993, 93-1 CPD ¶ 214.

Accordingly, our earlier decision is affirmed.


Ronald Berger
Associate General Counsel

²See Shel-Ken Properties, Inc., B-253614, Sept. 10, 1993, 93-2 CPD ¶ 153.